

# SENATE . . . . . No. 1218

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## The Commonwealth of Massachusetts

PRESENTED BY:

**Steven A. Tolman**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act to resolve collective bargaining disputes.

PETITION OF:

NAME:

Steven A. Tolman

DISTRICT/ADDRESS:

Second Suffolk and Middlesex

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. S01657 OF 2007-2008.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine

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### AN ACT TO RESOLVE COLLECTIVE BARGAINING DISPUTES.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

**SECTION 1.** Chapter 150E, Section 9 is hereby amended by deleting paragraphs six through eight and inserting the following new paragraphs:

If the parties are unable to resolve the issues in dispute within thirty days after publication of the fact finders report, either party may petition the board to order arbitration pursuant to the following:

If an employee organization duly recognized as representing the bargaining unit is engaged in an impasse which has continued for thirty days after the publication of the fact-finder's report pursuant to section nine of chapter one hundred and fifty E of the General Laws, or, if the parties have mutually waived the fact-finding provisions contained in said section nine of said chapter one hundred and fifty E, said employee organization shall petition the board to make an investigation. If, after an investigation, the board determines that:

- (1) the requirements of section nine of said chapter one hundred and fifty E have been complied with in good faith by the employee organization;
- (2) thirty days have passed since the date of publication of the fact-finding report pursuant to said section nine;
- (3) the proceedings for the prevention of any prohibited practices have been exhausted, provided that any such complaints have been filed with the commission prior to the date of the fact-finder's report; and
- (4) an impasse exists, the board shall notify the employer and the employee organization that the issues in dispute shall be resolved by a three-member arbitration panel, or when the parties mutually agree, the board shall select a single arbitrator in lieu of the arbitration panel.

Said panel shall be comprised of three arbitrators, one selected by the employer, one selected by the employee organization, and a third impartial arbitrator, who shall act as chairman of the panel, who shall be selected by the two previously selected arbitrators. In the event that either party fails to select an arbitrator or for any reason there is a delay in the naming of an arbitrator, or if the arbitrators fail to select a third arbitrator within the time prescribed by the board, the board shall appoint the arbitrator or arbitrators necessary to complete the panel, which shall act with the same force and effect as if the panel had been selected without intervention of the board.

In the event that the parties mutually elect to use a single arbitrator, selected by the board, the parties shall immediately request the board to appoint said arbitrator, who shall act with the same force and effect as if a three-member panel had been selected by the parties.

34           The single arbitrator or the arbitration panel acting through its chairman, shall conduct a  
35   hearing within ten days after the date of appointment of its chairman. The chairman shall give at  
36   least seven days notice of the time and place of such hearing in writing to each of the other  
37   arbitrators and to the representatives of such employer and employee organizations.

38           The single arbitrator or chairman shall preside over the hearing and shall take testimony.  
39   Upon application and for good cause shown, a person, labor organization, or governmental unit  
40   having substantial interest therein may be granted leave to intervene by the arbitration panel.  
41   The proceedings shall be informal. Any oral or documentary evidence and other data deemed  
42   relevant by the arbitration panel or single arbitrator may be received into evidence. The  
43   arbitrators shall have the power to administer oaths and to require by subpoena the attendance  
44   and testimony of witnesses, the production of books, records, and other evidence relative to or  
45   pertinent to the issues presented to them for determination. If any person refuses to obey a  
46   subpoena, refuses to be sworn or to testify, or if any witness, party, or attorney is guilty of any  
47   contempt while in attendance at any hearing, the arbitration panel or single arbitrator may, or the  
48   district attorney if requested, shall invoke the aid of the superior court within the jurisdiction in  
49   which the hearing is being held, whereupon the court shall issue an appropriate order.

50           A record of the proceedings shall be kept, and the chairman or single arbitrator shall  
51   arrange for the necessary recording service. Transcripts may be ordered at the expense of the  
52   party ordering them, but the transcripts shall not be necessary for an award by the panel or single  
53   arbitrator. The hearing may be continued at the discretion of the panel or single arbitrator and  
54   shall be concluded within forty days from the time of commencement. At the conclusion of the  
55   hearing, each party shall submit a written statement containing its last and best offer for each of  
56   the issues in dispute to the panel or single arbitrator, who shall take said statements under

advisement. Within ten days after the conclusion of the hearing, a majority of the panel, or the single arbitrator, shall select as the last and best arbitration award either the employer's written statement of its last and best offer, the employee organization's written statement of its last and best offer, or the recommendations of the fact-finder, if a fact-finding report and recommendations have been issued, and immediately shall give written notice of the selection to the parties. The selection shall be final and binding upon the parties, subject to appropriation. Within thirty calendar days of the last and best offer selection and award, the impartial chairperson of the arbitration panel, or the single arbitrator, shall issue a written opinion inclusive of an analysis of all statutory factors applicable to the proceedings.

The factors, among others, to be given weight by the arbitration panel or single arbitrator in arriving at the decision shall include, when applicable:

- (1) The financial ability of the commonwealth to meet the costs. Such factors which shall be taken into consideration shall include, but not be limited to, the commonwealth's long and short term bonded indebtedness.
- (2) The interests and welfare of the public.
- (3) The hazards of employment, physical, educational and mental qualifications, job training and skills involved.
- (4) A comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public or private employment in comparable districts, communities, or other state or federal jurisdictions.
- (5) The decisions and recommendations of the fact-finder, if any.

(6) The average consumer prices for goods and services, commonly known as the cost of living.

(7) The overall compensation presently received by the employees, including direct wages and fringe benefits.

(8) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(9) Such other factors not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between parties, in the public service or in private employment.

(10) The stipulation of the parties.

Any determination or decision of the arbitration panel or single arbitrator if supported by material and substantive evidence on the whole record shall be subject to appropriation, binding upon the parties and may be enforced at the instance of either party, the single arbitrator or the arbitration panel in the superior court in equity.

The commencement of a new fiscal year prior to the final awards by the arbitration panel shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority of the arbitration panel or its award. Any award of the arbitration panel may be retroactive to the expiration date of the last contract.

If an employer, or an employee organization willfully disobeys a lawful order of enforcement pursuant to this section, or willfully encourages or offers resistance to such order,

102 whether by strike or otherwise, the punishment for each day that such contempt continues may  
103 be a fine for each day to be determined at the discretion of said court.

104 Each of the parties shall provide compensation for the arbitrator which it has selected  
105 pursuant to this section. The remaining costs of arbitration proceedings under this section shall  
106 be divided equally between the parties. Compensation for the arbitrators shall be in accordance  
107 with a schedule of payment established by the American Arbitration Association.

108 Any arbitration awarded shall be binding on the parties and on the appropriate legislative body  
109 and made effective and enforceable pursuant to the provisions of chapter one hundred and fifty  
110 C, provided that said arbitration proceeding has been authorized by the appropriate legislative  
111 body and in the case of school employees, by the appropriate school committee.